

(2014) 02 PAT CK 0111

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22757 of 2012

Taufique Ahmad

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Citation : (2014) 1 BBCJ 428 : (2014) 2 BLJud 82

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Md. Helal Ahmad, Advocate, for the Petitioner; Mr. N.A. Shamsi, ASST. S.G, for the Respondent

Final Decision : Disposed Off

Judgement

Chakradhari Sharan Singh, J.(Oral)—Heard learned counsel for the petitioner and Learned Assistant Solicitor General appearing on behalf of Union of India and its officials.

2. Petitioner is aggrieved by order dated 9.7.2012 issued by respondent no.3, the Commandant of 36th Battalion, Seema Surkhsha Bal, Thakurganj, Kishanganj (Bihar), whereby petitioner has been terminated from service.

3. Petitioner at the relevant point of time was posted as Constable (General Duty). He was appointed with certain terms and conditions including the following:-

"He will have to successfully complete "Basic Recruit Training Course" being conducted by Sashastra Seema Bal, for which he will be given two chances only. If he fails, his services shall be liable to be terminated."

4. This is not in dispute that the petitioner was appointed on 29.7.2011 and he was sponsored for undergoing the said course with effect from 16.8.2011 but he was returned from the training centre after being relegated from the BRTC (Basic Recruit Training Course) batch on the ground of his mother's illness and

unwilling to undergo the said 16th Basic Recruitment Training Course. He was again sponsored for the said course with effect from 9.1.2012 but he did not complete it and was again returned to the Unit on 28.2.2012. Accordingly, the competent authority came to the conclusion that the petitioner was unsuitable to be retained on the post and the disciplinary authority in exercise of Rule 18(2) of the Seema Surkhsha Bal Rules, 2009 read with Rule 26 proposed to impose upon him the penalty of termination from service. A show cause notice dated 15.06.2012 was accordingly served upon him on the same date asking him to make representation on the penalty proposed and finally by the impugned order dated 9.7.2012 service of the petitioner came to be terminated. It further appears that the petitioner preferred an appeal against the said order of termination dated 2.6.2012 which came to be rejected by the Deputy Inspector General, SHQ, SSB, Ramdanga.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner was given only one week time for filing his reply to the show cause which could not be said to reasonable opportunity of hearing. He further submits that the order passed by the appellate authority is non-speaking inasmuch as it does not contain any discussion on the grounds taken by the petitioner in the memo of appeal. He further submits that it was because of illness of the petitioner's mother that the petitioner could not participate in the required training course which was beyond his control and the appellate authority ought to have considered this aspect.

6. Learned Assistant Solicitor General appearing on behalf of the Union of India, on the other hand submits that the said show cause notice dated 15.6.2012 was served upon the petitioner on the same date and the petitioner did not choose either to reply to the said show cause notice or to make a request for extension of time for filing of his reply. He further submits that as per the terms of appointment, the service of the petitioner was dispensed with as he failed to complete the course in two chances and accordingly, the competent authority rightly passed the order terminating services of the petitioner. He further submits that the appellate authority after considering the memo of appeal and other materials available on record dismissed the appeal rightly in the facts and circumstances of the case.

7. There is no dispute over the fact that the petitioner could not complete the course even in two chances as required as per terms of appointment. The consequence of failure on the part of the petitioner to complete the course in two attempts was mentioned there in the appointment letter itself and according to which his service was liable to be terminated. I do not find any illegality, therefore, in the order of the disciplinary authority as such.

8. The plea of the petitioner that the grounds taken by him in the memo of appeal have not been considered by the appellate authority cannot be looked into by this Court as no memo of appeal has been brought on record. However, from the order of the appellate authority, I find that there is no discussion of the

petitioner's grounds taken by the memo of appeal. Thus, without interfering with the order passed by the disciplinary authority or the appellate authority, I consider it appropriate in the facts and circumstances of the case to direct the appellate authority i.e. the Deputy Inspector General, SHQ, SSB, Ramdanga to reconsider the petitioner's memo of appeal and if he finds that any specific ground has been taken in the memo of appeal, he must deal with such ground/grounds and pass an order afresh. Such order should be passed by the appellate authority within three months from the date of receipt/production of a copy of this order, if any representation to this effect is filed within one month from today, by the petitioner.

9. This writ application is disposed of accordingly.